

Approved _____

3/12/1984
Date sh

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Marvin L. Littlejohn at _____
Chairperson

1:30 a.m./p.m. on February 27, 1984 in room 423-S of the Capitol.

All members were present except:

Committee staff present:

Emalene Correll, Research
Bill Wolff, Research
Norm Furse, Revisor
Sue Hill, Secy, to Committee

Conferees appearing before the committee:

Dr. Robert Harder, Secretary, Dept. of SRS.

Visitor's register, (Attachment No. 1.)

Chairman called meeting to order, then asked pleasure of committee in regard to committee meeting minutes for February 21, 22nd, and 23rd. A motion by Rep. Branson to approve these minutes was made, seconded by Rep. Harder, motion carried.

Chairman stated he had been contacted the same day of committee meeting on February 23, 1984, that action was taken on HCR 5063, in that there was some confusion in regard to this resolution. Several speaking to this confusion had caused them concern. Chair then recognized Rep. Cribbs.

HCR 5063

Rep. Cribbs spoke to committee in that he would like some clarification on HCR 5063, and asked committee members to please re-consider action taken on February 23, 1984, on HCR 5063. He then made a motion for same. Chair stated a second to the motion not needed, but a majority vote was. Chair asked for vote, voice vote taken, chair in doubt, show of hands indicated 9 in favor, 7 against, motion passed. HCR 5063 will have action re-considered.

Chair asked Bill Wolff, research to brief committee on HCR 5063 proposal. Mr. Wolff offered hand-out to committee, (see Attachment No. 2.), for details. This is regulation 28-4-422. Mr. Wolff stated the purpose of the Resolution was to present what was available to the Interim committee, that the rules and regulations show there are no specific requirements that relate to the regulation of preschools operating in conjunction with private schools that have kindergarten through grade 6, because those schools are not schools by definition, and therefore are not regulated. Many questions of Mr. Wolff from committee followed the briefing, i.e., there are no statutes governing private schools that have preschools in with them, only regulations they now comply with are fire safety codes; no, there are no regulations in regard to standards of curriculum, health standards, environmental safety, teacher/child ration, etc.

Note here, (Attachment No. 3.), for details on HCR 5063 by Mr. Jack L. Snavely, President of Alliance of Christian Children's Homes.

Rep. Wagon moved that HCR 5063 be passed out of committee favorably, motion seconded by Rep. Cribbs, more discussion, question called by Rep. Walker, vote taken, division called, show of hands indicated 9 for and 6 against. Motion carried. HCR 5063 passes favorably.

HB 2695

(See Attachment No. 4.), for details of Mr. Jack Snavel's position on HB 2695. Mr. Snavely is with Alliance of Christian Children's Homes.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE _____,

room 423-S, Statehouse, at 1:30 pm/p.m. on February 27, _____, 1984

HB 2695 continues:--

Chair asked Revisor Norm Furse to brief committee on a new balloon for HB 2695. It is a very comprehensive balloon, (see Attachment No. 5.), for details. There were line by line changes read by Mr. Furse, language changes, section and sub-section changes, and deletions. There was extensive discussion between committee and staff. Chairman then asked Staff to come with a substitute bill on HB 2695.

Chair called attention to a letter from Governor Carlin to which each member of committee received a copy, for his support of HB 2695 and HB 2709, (see Attachment No. 6.), for details.

HB 2697

Staff briefed committee on a comprehensive balloon copy of HB 2697, with numerous questions by committee to staff. (See Attachment No. 7.), for full details of balloon. Committee was then provided a hand-out of a draft of HB 2697 in the form it would read in final, and asked by Chairman to compare this draft with the balloon for their consideration on February 28, 1984 meeting. The word changes by adding "temporarily" in line 109, page 3 on HB 2697 was agreed to by committee, and should be made into the final drafting of this bill.

A copy of a final draft of HB 2697 is shown as (Attachment No. 8.), and for HB 2695 as Attachment No. 9.), see both for full details.

HB 2709

Dr. Robert Harder spoke to HB 2709, after giving hand-out to committee, (see Attachment No. 10.), for details. New language needed in this bill appears on line 61 after the word child, insert "regardless of age", and on line 64, strike the words, "regardless of age". Further, Dr. Harder spoke that the purpose of the bill is to ensure that sexual exploitation of a person under the age of 18 years be included in the Kansas definition of child abuse or neglect. He then recommended committee act favorably on HB 2709. Discussion and questions of Dr. Harder and staff ensued.

Rep. Walker then made a motion to amend HB 2709 to read, line 61 after the word child, inserting, "regardless of age", and on line 64, strike the words, "regardless of age". Motion seconded by Rep. Williams, motion carried.

Chair stated we have much to do tomorrow, and will have to add HB 3047 on the agenda for that date since we ran out of time today to include it in our agenda.

Meeting adjourned at 3:05 p.m.

Date: 2-27-84

GUEST REGISTER

HOUSE

PUBLIC HEALTH AND WELFARE

Please Print

NAME	ORGANIZATION	ADDRESS
Ethel May Miller	Ks Assn Retarded Citizens	
Joan Struckler	KAPS	Manhattan
Marilyn Bradt	KINH	Lawrence
Samuel Bluhm	KWSP	Topeka
Johnny H. [unclear]	KCPA	Topeka
Eliz Taylor	KAESC	Topeka
Ed Stanley	RACA	PERKY
Dave Schellenberg		
Allan L. Harburt	SRS Legal	Topeka
William R. [unclear]	Youthville	Lawrence
KETH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS	TOPEKA
R. Don Horner	Mental Health & Retardation Services	Topeka
Marjorie Van Buren	Judicial Administration	Topeka
DOUG FARAH	UPL	"

Attn #1.
2-27-1984

*Attn # 2
2-27-84*

(1) Any person, corporation, firm, association, or other organization desiring to conduct a child care center or preschool which operates will operate for more than five consecutive hours or more than one day per week shall apply for a license on forms supplied by the Kansas department of health and environment.

(2) In lieu of being licensed, preschools operated on the premises of private schools providing kindergarten through grade six shall be governed by Kansas statutes applicable to private schools.

(2) (3) An Each application for a license or an application for renewal of license shall be accompanied by a the license fee which is shall not be refundable.

(3) (4) Children shall not be in attendance at the center or preschool until a license has been issued by the Kansas department of health and environment.

(4) (5) Applicants shall be 18 years of age or older at time of application.

(5) (6) A license shall be issued if the secretary finds that the applicant is in compliance with the requirements of K.S.A. 65-501 et seq. and amendments thereof, and the rules and regulations promulgated pursuant to those statutes, and that the applicant has made full payment of the license fee required by the provisions of K.S.A. 65-505 and amendments thereof.

(6) (A) A license for an additional facility operated by a current-applicant licensee shall not be issued until all existing facilities operated by the applicant licensee are in compliance with licensing regulations.

(7) (B) It shall be the responsibility of the licensee to provide the financial resources necessary to maintain compliance with licensing regulations.

(b) Statement of services offered. When making application to the Kansas department of health and environment for a license to conduct a child care center or preschool, the applicant shall state what services will be provided. Advertisements shall conform to the written statement of services. No claims as to

DEPT. OF ADMINISTRATION

OCT 20 1983

APPROVED BY *FAX*



APPROVED
ATTORNEY GENERAL

By *RJS* Asst.

*Attn 2
2-27-84*

Attn # 3
2-27-4

HCR5063

I am not in favor of HCR5063 for the following reasons:

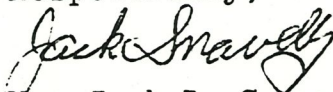
Friday, February 24th, I received a copy of the latest regulations for preschools, dated December 15, 1983. This further information had not formerly been available in the statutes books at the legislative library where I had researched the licensing regulations for preschools. After studying this new information, to my knowledge, this bill would not help the christian preschools, therefore I am reversing my previous testimony on HCR5063.

Altho I am testifying against this bill, I do feel the present regulations do not nearly meet the needs of all preschools. Many churches are now operating preschools or plan to operate a preschool without also operating a private school which provides kindergarten through grade six on the premises. Private christian schools and christian preschools should not be required to be liscensed by the Department of Health and Environment. This is a direct violation of the First Amendment of our Constitution.

Our private christian schools are daily turning out students which test out on the average much higher on the ACT tests than students that have attended our government schools. This is done by hiring capable and dedicated teachers, not certified teachers. Certification has not proven itself to be valuable. Government Schools all have certified teachers and look at the results. Our entire nation is in an uproar because of the deplorable conditions in our government schools. Under the accredited school system, teachers are all certified and it has not helped bring better education to our school children. Our private preschools and private schools K-12 should not be burdened with these state controls which have only brought turmoil to our government schools.

In conclusion, we ask you to carefully consider this bill and that HCR5063 not be reported favorably.

Respectfully,



Mr. Jack L. Snavely, President
Alliance of Christian Children's Homes

Attn #3
2-27-1984

HB2695

Attn #4
2-27-84

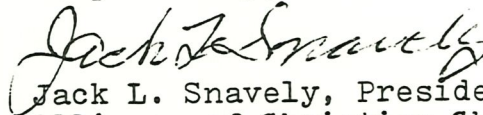
I am opposed to HB2695 for the following reasons:

Line 0027, 0032-0034 There are too many fringe cases of deprived and children removed from homes these days, for child abuse. In those cases where serious deprivation and abuse has been proven, we have no objection. We also need to look closer at this section on a diversion agreement. This agreement does NOT indicate guilt. Rather the defendant agrees to counseling so the case does not go to court. Child abuse is a frightening charge, and many times it is simply a case of the parent's word against the state. Frightened parents sometimes would sign anything to avoid the humiliation and fear, knowing that it will be very difficult to prove they are not abusers. Again, it is the questionable cases that concern us. The penalty applies to ALL who have signed a diversion agreement.

Line 0041, 0063, 0072 We must be very careful posing penalties on child care workers, this amendment should read convicted of child abuse, not confirmed, they should have had a court hearing before a judge and been convicted before coming under this act.

In conclusion, we are opposed to HB2695 and ask that it is not reported favorably.

Respectfully,



Jack L. Snavely, President
Alliance of Christian Children's Homes

Attn #4
2-27-1984

Attn #5
2-27-84

HOUSE BILL No. 2695

By Committee on Public Health and Welfare

1-17

0017 AN ACT prohibiting the maintaining of certain homes for chil-
0018 dren by certain persons; amending K.S.A. 1983 Supp. 65-516
0019 and 65-519 and repealing the existing sections.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 1983 Supp. 65-516 is hereby amended to
0022 read as follows: 65-516. No person shall maintain a boarding
0023 home for children or maintain a family day care home if, in such
0024 boarding home or family day care home, there resides any person
0025 who:

0026 ~~(a) Has been convicted of child abuse;~~
0027 (b) has had a child declared to be deprived or a child in need
0028 of care;

0029 ~~(c) has had a child removed from the home pursuant to the~~
0030 ~~Kansas juvenile code or the Kansas code for care of children;~~

0031 ~~(d) has been convicted of a sexual offense;~~

0032 (e) has signed a diversion agreement pursuant to K.S.A. 22-
0033 2906 *et seq.*, and amendments thereto, involving a charge of
0034 child abuse or a sexual offense;

0035 ~~(f) has been found to be an incapacitated person in need of a~~
0036 ~~guardian or conservator, or both, pursuant to the act for obtaining~~
0037 ~~a guardian or conservator, or both;~~

0038 (g) has been found to be unfit to have custody of a minor
0039 child pursuant to K.S.A. 60-1610 and amendments thereto; or

0040 (h) has an infectious or contagious disease; or

0041 ~~(i) has committed an act of child abuse as confirmed by the~~
0042 ~~state department of social and rehabilitation services.~~

0043 Sec. 2. K.S.A. 65-519 is hereby amended to read as follows:
0044 65-519. (a) The secretary shall issue a certificate of registration to
0045 any person who applies for registration on forms furnished by the

(a)

, works or volunteers

(1) has a felony conviction or has a conviction of any act which is described in articles 34, 35, or 36 of chapter 21 of the Kansas Statutes or has committed an act of physical, mental or emotional abuse or neglect or sexual abuse as validated by the department of social and rehabilitation services pursuant to K.S.A. 1983 Supp. 38-1523.

(2)

(3)

or a similar statute of other states

(4)

or pursuant to K.S.A. 1983 Supp. 38-1635

(5)

(b) No person shall maintain a boarding home for children or maintain a family day care home if such person has been found to be a disabled person in need of a guardian or conservator, or both;

(c) Any person who resides in the home and who has been found to be a disabled person in need of a guardian or conservator, or both, shall be counted in the total number of children allowed in care.

(d) The secretary shall have access to any court orders or adjudications of any court of record or any records of such orders or adjudications and any report of investigations as authorized by K.S.A. 1983 Supp. 38-1523 (e) in the possession of the department of social and rehabilitation services concerning persons residing in a boarding home for children or a family day care home in order to determine whether or not the home meets the requirements of K.S.A. 65-516 and 65-519, and amendments thereto.

Atch. 5

0046 secretary and who attests to the safety of the family day care
0047 home for the care of children and certifies that no person resid-
0048 ing in the family day care home:

0049 ~~(1) Has been convicted of child abuse or a sexual offense;~~

0050 ~~(2) has had a child declared to be deprived or a child in need~~
0051 ~~of care;~~

0052 ~~(3) has had a child removed from the home pursuant to the~~
0053 ~~Kansas juvenile code or the Kansas code for care of children;~~

0054 ~~--(4) has signed a diversion agreement pursuant to K.S.A. 22-~~
0055 ~~2906 et seq., and amendments thereto, involving a charge of~~
0056 ~~child abuse or a sexual offense;~~

0057 ~~(5) has been found to be an incapacitated person in need of a~~
0058 ~~guardian or conservator, or both, pursuant to the act for obtaining~~
0059 ~~a guardian or conservator, or both;~~

0060 ~~(6) has been found to be unfit to have custody of a minor~~
0061 ~~child pursuant to K.S.A. 60-1610 and amendments thereto; or~~

0062 ~~(7) has an infectious or contagious disease; or~~

0063 ~~(8) has committed an act of child abuse as confirmed by the~~
0064 ~~state department of social and rehabilitation services.~~

0065 (b) The secretary shall furnish each applicant for registration
0066 a family day care home safety evaluation form to be completed
0067 by the applicant and submitted with the registration application.

0068 (c) The certificate of registration shall be renewed annually
0069 in the same manner provided for in this section.

0070 ~~(d) The secretary shall have access to any court orders or~~
0071 ~~adjudications of any court of record or any records of such orders~~
0072 ~~or adjudications and any report of confirmed child abuse in the~~
0073 ~~possession of the department of social and rehabilitation services~~
0074 ~~concerning persons residing in a boarding home for children or a~~
0075 ~~family day care home in order to determine whether or not the~~
0076 ~~home meets the requirements of K.S.A. 65-516 and 65-519, and~~
0077 ~~amendments thereto.~~

0078 Sec. 3. K.S.A. 1983 Supp. 65-516 and 65-519 are hereby
0079 repealed.

0080 Sec. 4. This act shall take effect and be in force from and
0081 after its publication in the statute book.

STATE OF KANSAS

Attn # 4
2-27-1984



OFFICE OF THE GOVERNOR

State Capitol
Topeka 66612-1590

John Carlin Governor

February 24, 1984

The Honorable Marvin Littlejohn
State Representative
State Capitol Building - Room 422-S
Topeka, Kansas 66612

Dear Representative Littlejohn:

The purpose of this letter is to express my support of House Bill 2695 and House Bill 2709.

House Bill 2695 prevents child care facilities or homes from providing care for children when there is a person who has committed an act of child abuse as confired by the State Department of Social and Rehabilitation Services residing in the home; and to ensure the Secretary of Health and Environment access to any report of confirmed child abuse in the possession of the Department of Social and Rehabilitation Services concerning certain persons residing in a boarding home for children or a family day care home. I support this legislation and I urge the Committee's favorable consideration.

House Bill 2709 ensures that sexual exploitation of a person under the age of 18 is included in the Kansas definition of child abuse or neglect. Passage of this bill will eliminate the Kansas Department of Social and Rehabilitation Services' problem with eligibility for federal child abuse formula grant money experienced this past summer regarding the confidentiality of law enforcement records. Moreover, passage of this bill ensures the protection of all youth under the age of 18 from sexual abuse or sexual exploitation without discrimination due to age. I urge support of this legislation.

Thank you for your favorable consideration of these important bills.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "John Carlin".

JOHN CARLIN
Governor

JC:mo

Attn. # 6
2-27-1984

HOUSE BILL No. 2697

By Committee on Public Health and Welfare

1-17

0017 AN ACT concerning state institutions for the mentally retarded;
0018 establishing a procedure for admission thereto; relating to the
0019 rights of persons admitted thereto.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. When used in this act:

0022 (a) "Adaptive behavior" means the effectiveness or degree
0023 with which an individual meets the standards of personal inde-
0024 pendence and social responsibility expected of that person's age,
0025 cultural group and community.

0026 (b) "Care" means supportive services, including, but not
0027 limited to, provision of room and board, supervision, protection,
0028 assistance in bathing, dressing, grooming, eating and other ac-
0029 tivities of daily living.

0030 ~~(c) "Commissioner" means the commissioner of mental~~
0031 ~~health and retardation services of the state department of social~~
0032 ~~and rehabilitation services.~~

0033 ~~(d)~~ "Institution" means a state institution for the mentally
0034 retarded including the following institutions: Kansas neurologi-
0035 cal institute, Norton state hospital, Parsons state hospital and
0036 training center and Winfield state hospital and training center.

0037 ~~(e)~~ "Mental retardation" means significantly subaverage
0038 general intellectual functioning existing concurrently with defi-
0039 cits in adaptive behavior and manifested during the period from
0040 ~~conception~~ to age 18.

0041 ~~(f)~~ "Respite care" means temporary, short-term care not ex-
0042 ceeding 90 days per calendar year to provide relief from the daily
0043 pressures involved in caring for a mentally retarded person.

0044 ~~(g)~~ "Restraint" means the use of a totally enclosed crib or any
0045 material to restrict or inhibit the free movement of one or more

delete

(c)

(d)

delete

birth

(e)

(f)

Attn. # 7
2-27-84

Attn. 7

0046 limbs of a person except medical devices which limit movement
0047 for examination, treatment or to insure the healing process.

(g)

0048 ~~(h)~~ "Seclusion" means being placed alone in a locked room
0049 where the individual's freedom to leave is thereby restricted and
0050 where such placement is not under continuous observation.

(h)

or the designee of the secretary

0051 ~~(i)~~ "Secretary" means the secretary of social and rehabilita-
0052 tion services.

(i)

delete

secretary

0053 ~~(j)~~ "Significantly subaverage general intellectual function-
0054 ing" means performance which is two or more standard devia-
0055 tions from the mean score on a standardized intelligence test
0056 specified by the ~~commissioner~~

(j)

or the designee of the chief administrative officer

0057 ~~(k)~~ "Superintendent" means the chief administrative officer
0058 of the institution.

(k)

0059 ~~(l)~~ "Training" means the provision of specific environmental,
0060 physical, mental, social and educational interventions and
0061 therapies for the purpose of halting, controlling or reversing
0062 processes that cause, aggravate or complicate malfunctions or
0063 dysfunctions of development.

delete

secretary

delete

0064 Sec. 2. The admission of a mentally retarded person to an
0065 institution shall be at the discretion of the ~~commissioner or the~~
0066 ~~commissioner's designee.~~

No person shall be admitted

0067 Sec. 3. ~~The commissioner or the commissioner's designee~~

delete

0068 ~~shall not admit a person~~ to an institution except for the purpose
0069 of diagnosis and evaluation unless the superintendent ~~or the~~

0070 ~~superintendent's designee~~ has found such person to be mentally
0071 retarded, in need of care and training and that placement in the
0072 institution is the least restrictive alternative available. An ad-
0073 mission for respite care shall not require a finding that a person is
0074 in need of training.

If in the opinion of the superintendent an applicant for admission meets the definition of "disabled person" as set forth in K.S.A. 59-3002 and amendments thereto, the

for the purposes of conducting a court ordered evaluation pursuant to

0075 Sec. 4. ~~A~~ person shall not be admitted to an institution ex-
0076 cept ~~as set forth in~~ subsection (a)(6) of K.S.A. 59-3010 and
0077 amendments thereto until a court has determined the legal status
0078 of the person under the act for obtaining a guardian or conserva-

delete

. The provisions of this paragraph shall not be applicable if a court has already determined the legal status of the applicant under the act.

0079 tor, or both, ~~if in the opinion of the superintendent or the~~
0080 ~~superintendent's designee the person meets the definition of~~
0081 ~~"disabled person" as set forth in K.S.A. 59-3002 and amendments~~
0082 ~~thereto.~~

delete

0083 ~~Sec. 5. The court shall not approve placement of a ward in an~~
0084 ~~institution pursuant to subsection (g) of K.S.A. 59-3018 and~~
0085 ~~amendments thereto except for the purpose of diagnosis and~~
0086 ~~evaluation unless the court finds that the criteria set forth in~~
0087 ~~section 3 is met.~~

delete

5

0088 ~~Sec. 6. The superintendent or the superintendent's designee~~
0089 ~~shall periodically review a person's status to insure that the~~
0090 ~~criteria set forth in section 3 is still being met. A review shall be~~
0091 ~~conducted at the end of 90 days, 180 days and one year from the~~
0092 ~~date of admission and annually thereafter. A copy of the review~~
0093 ~~report shall be furnished to the court, guardian or parent as~~
0094 ~~appropriate.~~

delete

at least

delete

person, a natural guardian or a guardian and the court having jurisdiction of the guardianship

0095 ~~Sec. 7. A person shall be discharged from an institution~~
0096 ~~whenever (a) the superintendent or the superintendent's designee~~
0097 ~~finds that at least one of the criteria set forth in section 3 is no~~
0098 ~~longer being met, or (b) a person, guardian or parent of a minor~~
0099 ~~requests discharge from an institution. A discharge of a minor or~~
0100 ~~disabled person pursuant to (b) shall require the consent of a~~
0101 ~~parent or guardian as appropriate except as set forth in section 8.~~

6

The superintendent shall discharge a person

delete

and upon the giving of a 10 day notice, or (b) upon the request of a person, natural guardian or guardian.

0102 ~~Sec. 8. If a disabled person requests release from an institution~~
0103 ~~and the guardian and the superintendent or the superintendent's~~
0104 ~~designee do not concur with such request, the matter~~
0105 ~~shall be referred to the court having jurisdiction over the guardianship~~
0106 ~~for disposition. The court shall not approve continued~~
0107 ~~placement in the institution unless the court finds that the~~
0108 ~~criteria set forth in section 3 is still being met.~~

delete

natural guardian

7

secretary

The secretary may transfer a person to any other institution under the jurisdiction of the secretary for a period not to exceed 90 days to obtain treatment not available in an institution for the mentally retarded. The secretary shall consult with the person, natural guardian, or guardian prior to any transfer under this section.

0109 ~~Sec. 9. The commissioner may transfer a person from one~~
0110 ~~institution to another institution whenever the commissioner is~~
0111 ~~of the opinion that the transfer is in the best interests of the~~
0112 ~~person.~~

0113 ~~Sec. 10. Restraint or seclusion shall not be applied to a~~
0114 ~~person unless it is determined by a member of the medical staff~~
0115 ~~to be required to prevent substantial bodily injury to such person~~
0116 ~~or others. The extent of restraint or seclusion applied to the~~
0117 ~~person shall be the least restrictive measure necessary to prevent~~
0118 ~~injury to the person or others, and the use of restraint or seclusion~~
0119 ~~shall not exceed three hours without medical reevaluation,~~

8

delete

treatment

0120 except that such medical reevaluation shall not be required,
0121 unless necessary, between the hours of 12 o'clock midnight and
0122 8 a.m. A member of the medical staff shall sign a statement
0123 explaining the medical necessity for the use of any restraint and
0124 seclusion and shall make such statement a part of the medical
0125 record of such person.

9

0126 Sec. ~~11~~ Except as limited by this act, a person shall not lose
0127 rights as a citizen, property rights or legal capacity by reason of
0128 being admitted to an institution, except that the superintendent
0129 of an institution may adopt reasonable policies concerning the
0130 exercise of such rights by persons admitted to the institution.

10

0131 Sec. ~~12~~ (a) Every person admitted to an institution, in addi-
0132 tion to all other rights preserved by the provisions of this act,
0133 shall have the following rights:

(2) to have the natural guardian or guardian of the person fully informed of all rights and responsibilities available to or required of persons admitted to the institution;

0134 (1) To be fully informed of all rights and responsibilities
0135 available to or required of persons admitted to the institution;

(3)

0136 ~~(2)~~ to be fully informed of and offered the opportunity to
0137 participate in an individual plan of care and training;

(4)

0138 ~~(3)~~ to communicate by letter with the secretary, commis-
0139 sioner, superintendent of the institution, any court, physician,
0140 attorney, natural guardian or guardian, and all such communica-
0141 tion shall be forwarded at once to the addressee without exami-
0142 nation and communications from such persons shall be delivered
0143 to the person without examination;

of mental health and retardation services

(5)

0144 ~~(4)~~ to manage personal and financial affairs to the extent
0145 possible;

(6)

0146 ~~(5)~~ to be free from mental and physical abuse;

(7)

0147 ~~(6)~~ not to be subject to such procedures as psychosurgery,
0148 electroshock therapy, experimental medication, aversion therapy
0149 or hazardous treatment procedures without the written consent
0150 of the person or the written consent, as appropriate, of a parent or
0151 guardian;

(8)

0152 ~~(7)~~ to be treated with respect and full recognition of dignity
0153 and individuality including privacy and confidentiality;

(9)

0154 ~~(8)~~ to be free from involuntary labor and to be paid for any
0155 work performed other than personal housekeeping;

(10)

0156 ~~(9)~~ to be free to communicate, associate and meet privately

0157 with individuals of choice including sending and receiving mail
0158 unopened;

(11)

0159 ~~(10)~~ to participate in social, religious and community group
0160 activities to the extent possible; and

(12)

0161 ~~(11)~~ to retain and use personal possessions and clothing.

0162 (b) The superintendent of an institution may, for good cause
0163 only, restrict a person's rights under this section, except that the

delete

0164 rights enumerated in subsections (a) (1), (2), (3), ~~(5) and (7)~~, and

(4), (6) and (8),

0165 the right to mail any correspondence which does not violate
0166 postal regulations, shall not be restricted by the superintendent

0167 of an institution under any circumstances. A statement explain-
0168 ing the reasons for any restriction of a person's rights shall be

treatment

0169 immediately entered on such person's ~~medical~~ record and copies
0170 of such statement shall be ~~available~~ to the person and the natural

delete

0171 guardian or guardian of the person.

0172 (c) Each institution shall adopt policies governing the con-
0173 duct of all persons receiving care and training in such institution,
0174 which policies shall be consistent with the provisions of this
0175 section.

sent

0176 (d) Any person willfully depriving any person of the rights
0177 protected by this section, except for the restriction of such rights

0178 in accordance with the provisions of subsection (b), shall be
0179 guilty of a class C misdemeanor.

11

0180 Sec. 13. This act shall take effect and be in force from and
0181 after its publication in the statute book.

DRAFT
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2-27-84
attn #8

House Bill No. 2697

By Committee on Public Health and Welfare

AN ACT concerning state institutions for the mentally retarded; establishing a procedure for admission thereto; relating to the rights of persons admitted thereto.

Be it enacted by the Legislature of the State of Kansas:

Section 1. When used in this act:

(a) "Adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of that person's age, cultural group and community.

(b) "Care" means supportive services, including, but not limited to, provision of room and board, supervision, protection, assistance in bathing, dressing, grooming, eating and other activities of daily living.

(c) "Institution" means a state institution for the mentally retarded including the following institutions: Kansas neurological institute, Norton state hospital, Parsons state hospital and training center and Winfield state hospital and training center.

(d) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from birth to age 18.

(e) "Respite care" means temporary, short-term care not exceeding 90 days per calendar year to provide relief from the daily pressures involved in caring for a mentally retarded person.

(f) "Restraint" means the use of a totally enclosed crib or any material to restrict or inhibit the free movement of one or more limbs of a person except medical devices which limit

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movement for examination, treatment or to insure the healing process.

(g) "Seclusion" means being placed alone in a locked room where the individual's freedom to leave is thereby restricted and where such placement is not under continuous observation.

(h) "Secretary" means the secretary of social and rehabilitation services or the designee of the secretary.

(i) "Significantly subaverage general intellectual functioning" means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified by the secretary.

(j) "Superintendent" means the chief administrative officer of the institution or the designee of the chief administrative officer.

(k) "Training" means the provision of specific environmental, physical, mental, social and educational interventions and therapies for the purpose of halting, controlling or reversing processes that cause, aggravate or complicate malfunctions or dysfunctions of development.

Sec. 2. The admission of a mentally retarded person to an institution shall be at the discretion of the secretary.

Sec. 3. No person shall be admitted to an institution except for the purpose of diagnosis and evaluation unless the superintendent has found such person to be mentally retarded, in need of care and training and that placement in the institution is the least restrictive alternative available. An admission for respite care shall not require a finding that a person is in need of training.

Sec. 4. If in the opinion of the superintendent an applicant for admission meets the definition of "disabled person" as set forth in K.S.A. 59-3002 and amendments thereto, the person shall not be admitted to an institution except for

the purposes of conducting a court ordered evaluation pursuant to subsection (a)(6) of K.S.A. 59-3010 and amendments thereto until a court has determined the legal status of the person under the act for obtaining a guardian or conservator, or both. The provisions of this paragraph shall not be applicable if a court has already determined the legal status of the applicant under the act.

Sec. 5. The superintendent shall periodically review a person's status to insure that the criteria set forth in section 3 is still being met. A review shall be conducted at the end of 90 days, 180 days and one year from the date of admission and at least annually thereafter. A copy of the review report shall be furnished to the person, a natural guardian or a guardian and the court having jurisdiction of the guardianship.

Sec. 6. The superintendent shall discharge a person from an institution whenever (a) the superintendent finds that at least one of the criteria set forth in section 3 is no longer being met, and upon the giving of a 10 day notice, or (b) upon the request of a person, natural guardian or guardian. A discharge of a minor or disabled person pursuant to (b) shall require the consent of a natural guardian or guardian.

Sec. 7. The secretary may transfer a person from one institution to another institution whenever the secretary is of the opinion that the transfer is in the best interests of the person. The secretary may transfer a person to any other institution under the jurisdiction of the secretary for a period not to exceed 90 days to obtain treatment not available in an institution for the mentally retarded. The secretary shall consult with the person, natural guardian or guardian prior to any transfer under this section.

Sec. 8. Restraint or seclusion shall not be applied to a person unless it is determined by a member of the treatment

staff to be required to prevent substantial bodily injury to such person or others. The extent of restraint or seclusion applied to the person shall be the least restrictive measure necessary to prevent injury to the person or others, and the use of restraint or seclusion shall not exceed three hours without medical reevaluation, except that such medical reevaluation shall not be required, unless necessary, between the hours of 12 o'clock midnight and 8 a.m. A member of the medical staff shall sign a statement explaining the medical necessity for the use of any restraint and seclusion and shall make such statement a part of the medical record of such person.

Sec. 9. Except as limited by this act, a person shall not lose rights as a citizen, property rights or legal capacity by reason of being admitted to an institution, except that the superintendent of an institution may adopt reasonable policies concerning the exercise of such rights by persons admitted to the institution.

Sec. 10. (a) Every person admitted to an institution, in addition to all other rights preserved by the provisions of this act, shall have the following rights:

(1) To be fully informed of all rights and responsibilities available to or required of persons admitted to the institution;

(2) to have the natural guardian or guardian of the person fully informed of all rights and responsibilities available to or required of persons admitted to the institution;

(3) to be fully informed of and offered the opportunity to participate in an individual plan of care and training;

(4) to communicate by letter with the secretary, commissioner of mental health and retardation services, superintendent of the institution, any court, physician, attorney, natural guardian or guardian, and all such communication shall be forwarded at once to the addressee

without examination and communications from such persons shall be delivered to the person without examination;

(5) to manage personal and financial affairs to the extent possible;

(6) to be free from mental and physical abuse;

(7) not to be subject to such procedures as psychosurgery, electroshock therapy, experimental medication, aversion therapy or hazardous treatment procedures without the written consent of the person or the written consent, as appropriate, of a parent or guardian;

(8) to be treated with respect and full recognition of dignity and individuality including privacy and confidentiality;

(9) to be free from involuntary labor and to be paid for any work performed other than personal housekeeping;

(10) to be free to communicate, associate and meet privately with individuals of choice including sending and receiving mail unopened;

(11) to participate in social, religious and community group activities to the extent possible; and

(12) to retain and use personal possessions and clothing.

(b) The superintendent of an institution may, for good cause only, restrict a person's rights under this section, except that the rights enumerated in subsections (a)(1), (2), (3), (4), (6) and (8), and the right to mail any correspondence which does not violate postal regulations, shall not be restricted by the superintendent of an institution under any circumstances. A statement explaining the reasons for any restriction of a person's rights shall be immediately entered on such person's treatment record and copies of such statement shall be sent to the person and the natural guardian or guardian of the person.

(c) Each institution shall adopt policies governing the conduct of all persons receiving care and training in such

institution, which policies shall be consistent with the provisions of this section.

(d) Any person willfully depriving any person of the rights protected by this section, except for the restriction of such rights in accordance with the provisions of subsection (b), shall be guilty of a class C misdemeanor.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

DRAFT
2/27/84

Attn. # 9
2-27-84

House Bill No. 2695

By Committee on Public Health and Welfare

AN ACT prohibiting the maintaining of certain homes for children by certain persons; amending K.S.A. 1983 Supp. 65-516 and 65-519 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1983 Supp. 65-516 is hereby amended to read as follows: 65-516. (a) No person shall maintain a boarding home for children or maintain a family day care home if, in such boarding home or family day care home, there resides, works or volunteers any person who:

(1) Has a felony conviction or has a conviction of any act which is described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated or has committed an act of physical, mental or emotional abuse or neglect or sexual abuse as validated by the department of social and rehabilitation services pursuant to K.S.A. 1983 Supp. 38-1523 and amendments thereto;

(2) has had a child declared to be deprived or a child in need of care;

(3) has had a child removed from the home pursuant to the Kansas juvenile code or the Kansas code for care of children or a similar statute of other states;

(4) has signed a diversion agreement pursuant to K.S.A. 22-2906 et seq., and amendments thereto, or pursuant to K.S.A. 1983 Supp. 38-1635 and amendments thereto, involving a charge of child abuse or a sexual offense;

(5) has been found to be unfit to have custody of a minor child pursuant to K.S.A. 60-1610 and amendments thereto; or

(6) has an infectious or contagious disease.

(b) No person shall maintain a boarding home for children or maintain a family day care home if such person has been found to

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be a disabled person in need of a guardian or conservator, or both.

(c) Any person who resides in the home and who has been found to be a disabled person in need of a guardian or conservator, or both, shall be counted in the total number of children allowed in care.

(d) The secretary shall have access to any court orders or adjudications of any court of record or any records of such orders or adjudications and any report of investigations as authorized by subsection (e) of K.S.A. 1983 Supp. 38-1523 and amendments thereto in the possession of the department of social and rehabilitation services concerning persons residing in a boarding home for children or a family day care home in order to determine whether or not the home meets the requirements of K.S.A. 1983 Supp. 65-516 and 65-519 and amendments thereto.

Sec. 2. K.S.A. 1983 Supp. 65-519 is hereby amended to read as follows: 65-519. (a) The secretary shall issue a certificate of registration to any person who applies for registration on forms furnished by the secretary and who attests to the safety of the family day care home for the care of children.

(b) The secretary shall furnish each applicant for registration a family day care home safety evaluation form to be completed by the applicant and submitted with the registration application.

(c) The certificate of registration shall be renewed annually in the same manner provided for in this section.

Sec. 3. K.S.A. 1983 Supp. 65-516 and 65-519 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Statement Regarding House Bill 2709

*Attn. #10
2-27-84*

Section I

1. Title of Bill:
Kansas Code for Care of Children regarding definitions and law enforcement records.
2. Purpose of Bill:
To ensure that sexual exploitation of a person under the age of 18 is included in the Kansas definition of child abuse or neglect.
3. Why The Bill:
To ensure that the sexual offenses described in the Criminal Code and referred to in the Kansas Code for Care of Children, K.S.A. 1983 Supp. 38-1502(c) - "Article 35, Chap. 21 of the Kansas Statutes Annotated and those acts described in K.S.A. 21-3602 or K.S.A. 21-3603 and amendments thereto" extend to include the age range of all children covered by the Kansas Code for Care of Children and bring Kansas into conformity with the federal regulations concerning sexual abuse and sexual exploitation.
4. Background of the Bill:
In Public Law 95-266, the definition of child abuse and neglect was amended to include sexual exploitation. This definition is included in 45 C.F.R. 1340.2(d) 48 Federal Register 3698 (January 26, 1983). The definition of sexual abuse in the Kansas laws is contained in Article 35, Chap. 21 of the Kansas Statutes Annotated and those acts described in K.S.A. 21-3602 or K.S.A. 21-3603. These acts are in the Criminal Code and are defined in terms of involving children under the age 16 or less, rather than below the age of 18 as required in the Kansas Code for Care of Children. The reference to the Criminal Code in regard to defining child sexual abuse requires clarification of the Kansas Code for Care of Children to ensure that all children below the age of 18 are included in the definition of sexual abuse.

A favorable Attorney General's opinion has been received confirming that youth under the age of 18 would be considered sexually abused under any of the definitions contained in the relevant sections of the Criminal Code referred to above; however this specific amendment to the Kansas Code for Care of Children will provide statutory protection for all children in need of care in regard to sexual abuse and eliminate any possible grounds for court action which could jeopardize the safety and welfare of a child in need of care.

5. Possible Problems with the Bill:
Some resistance from county or district attorneys or law enforcement personnel may be encountered when the Kansas Code for Care of Children specifically includes the 16 and 17-year old youth (girl) as a victim of child sexual abuse as young women this age may be considered seductive and as contributing to the commitment of the act.

Rebuttal:

The Kansas Code for Care of Children is designed to provide civil proceedings for the protection of children and the Code proceeds to define a child as a person "under the age of 18". The wording of this bill insures the protection of all youth under the age of 18 from sexual abuse or sexual exploitation without discrimination due to age.

6. SRS Recommendations:
Youth Services recommends full SRS support.

*Attn. #10
2-27-84*

Section II - House Bill 2709

1. Title of Bill:
Amendment to K.S.A. 1983 Supp. 38-1508 to delete subsection (f) regarding access to child abuse/neglect reports and records.
2. Purpose of Bill:
This section deletes K.S.A. 1983 Supp. 38-1508(f) which was interpreted by the federal agencies as giving the court authority to release child abuse/neglect information to inappropriate persons.
3. Why the Bill:
Deletion of subsection (f) will eliminate the problem with eligibility for the federal child abuse formula grant money experienced this past summer regarding the confidentiality of law enforcement records. This section was seen as too broad for conformance with the federal regulations.
4. Background of the Bill:
K.S.A. 1983 Supp. 38-1507 and 38-1508 already provided that all interested parties may have access to the child abuse/neglect reports and records that they need, subsection (f) is seen as unnecessary to access child abuse/neglect information by appropriate persons.
5. Possible Problems with the Bill:
None.
6. SRS Recommendations:
Youth Services recommends full SRS supports.

Robert C. Harder, Secretary
Office of the Secretary
Social and Rehabilitation Services
296-3271
1-23-84